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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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12 TOM AZZARELLO,

13 Plaintiff,

14 v.

15 NAVAGILITY LLC, a limited liability
corporation; ANTHONY M. DI MARCO, an
16 individual and DOES 1 - 10, inclusive,

17 Defendant.
18

) **CASE NO. 3:08-cv-2371-MMC**

) **Hon. Maxine M. Chesney**

) **REQUEST FOR SETTING OF HEARING**
) **ON MOTION TO DISMISS**

) **Action Filed: May 8, 2008**
)

19 TOM AZZARELLO, the plaintiff in this matter, requests that the pending Motion to Dismiss
20 be decided without a hearing or, alternatively, that it be set for hearing at the earliest possible date.

21 The Complaint in this case was filed on May 8, 2008. The defendant filed a Motion to
22 Dismiss on May 30, 2008. That Motion is fully briefed and ready to be decided.

23 As a result of defendant's disinclination to stipulate to a Magistrate, the case was just
24 reassigned to Judge Chesney. This resulted in a July 10 hearing date on the Motion to Dismiss being
25 vacated. Defendant's lawyer, Charles Jung, advised plaintiff's lawyer that he had been told that
26 Judge Chesney could hear the motion with as little as two weeks notice. However, Mr. Jung would
27 not be available until August 29, the day before the Labor Day weekend and a day on which
28 plaintiff's lawyer is scheduled to be out of town. She asked Mr. Jung to set the motion on an earlier

1 date, making clear to Mr. Jung that she was available to have the motion decided on several of the
 2 Court's available motion dates. Mr. Jung declined, saying that the first date (other than August 29)
 3 on which he was available was September 5, and that he would set the hearing for that date over
 4 plaintiff's objection. (Declaration of Joan Presky ¶¶ 2-7.)

5 The Motion has been fully briefed since June 26, 2008. It could be decided without a
 6 hearing. (Id. ¶¶ 3-4.) Plaintiff requests that the Court decide the motion without a hearing, or,
 7 alternatively, set the motion for hearing in July or August. It is unfair for the plaintiff to have to wait
 8 almost four months for it to be determined whether the case will be heard by this Court, and to
 9 proceed to case management and discovery.

10 DATED: July 11, 2008

HUDDLESTON LAW GROUP

By 

JOAN E. PRESKY, ESQ.

Attorneys for Plaintiff TOM AZZARELLO